

voting shares, the Slim Family has the right to elect a majority of América Móvil's board of directors and to determine the outcome of other actions requiring a vote of América Móvil shareholders, except with respect to corporate transactions that affect fundamental shareholder rights.<sup>170</sup> This 66.21 percent full voting (and controlling) interest **flows** through in its entirety to TELPRI.<sup>171</sup> An additional 5.74 percent of the full voting shares are known to be held by other Mexican investors,<sup>172</sup> and their interests also flow through entirely to TELPRI. SBCI holds 23.40 percent of the full voting shares through a trust that effectively neutralizes its vote.<sup>173</sup> Based on this information, and including SBCI's shares held in trust,<sup>174</sup> we calculate that Mexican citizens control 95.35 percent of America Movil's full voting shares.

57. Our second calculation of foreign voting interests in América Movil, which includes all shares of its capital stock, results in far fewer shares being identified in the record as held by investors that are citizens of, or have their principal places of business in, Mexico. Thus, with the exception of

(Continued from previous page) —————

holds approximately 66.21 percent of America Movil's full voting shares. We derive this figure by dividing the total number of Class AA shares held by the Slim family by the total number of issued and outstanding shares of America Móvil stock.

<sup>170</sup> See *supra* ¶ 55. Prior to the merger of America Movil with America Telecom, America Telecom held 66.29 percent of America Movil's full voting shares and the Slim family, in turn, held 82 percent of America Telecom's total capital stock (which consisted of one class of voting stock). See Nov. 1 Letter at 4-5. The 66.21 percent full voting interest that we calculate the Slim family now holds in America Movil as a result of the merger is nearly identical to the 66.29 percent full voting interest that America Telecom held in America Movil prior to the merger. Thus, we find it reasonable to conclude that the Slim family now holds approximately the same voting rights in America Móvil as AmCrica Telecom held before the merger, including the ability to "elect a majority of the members of America Movil's board of directors, and to determine the outcome of other actions requiring a vote of America Movil's shareholders, except in the very limited cases that require a vote of the holders of L shares." November 1 Letter at 4. See also February 26 Letter at 2 (stating that the merger "does not involve a substantial change of control of America Movil, nor has the ownership structure changed in any significant way").

<sup>171</sup> As explained in Section III.G.1. above, in calculating foreign voting interests, we do not apply the multiplier to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. Thus, the 66.21 percent full voting interest that the Slim family holds in America Movil **flows** through in its entirety to TELPRI because America Movil will hold indirectly up to 100 percent of the voting interests (through its wholly-owned and controlled subsidiary Sercotel) in TELPRI. See *supra* ¶ 10.

<sup>172</sup> See February 26 Letter at 2-3. We calculate, based on the post-merger capital structure information provided by America Movil, that other Mexican investors, through interests held in Class AA shares, hold approximately 5.74 percent of America Móvil's full voting shares. We derive this figure by dividing the total number of Class AA shares held by other Mexican investors by the total number of America Movil's issued and outstanding shares of Class AA and Class A stock, which together constitute its full voting shares.

<sup>173</sup> See February 26 Letter at 3. We calculate the full voting interest of SBCI using the same methodology we used to calculate the respective full voting interests of the Slim family and other Mexican investors. See *supra* n.169 and n.170. SBCI holds its capital stock interest in America Movil in the form of Class AA shares through a trust that votes the shares in the same manner as the majority of the outstanding AA shares. See February 26 Letter at 3, n.7.

<sup>174</sup> We note that SBCI has the right, however, to name two members of America Movil's 11 board members pursuant to an agreement to which American Telecom and SBCI are parties, and there is nothing in America Movil's bylaws or other governing documents that limits the matters on which the directors named by SBCI can participate. SBCI therefore has the right to minority representation on America Móvil's board of directors. See November 1 Letter at 4. See also *id.* at 4 n.14 (describing limitations on board composition under a letter of assurance provided by America Movil to the Department of Justice) and February 26 Letter at 3.

shares identified as held by SBCI and other investors known to be Mexican, the remaining 57.54 percent of America Móvil's voting interests are held by public shareholders. The citizenship or principal places of business of these public shareholders are not identified sufficiently for the record to allow us to find that their voting interests constitute investment from WTO Member countries.<sup>175</sup> We therefore treat this 57.54 percent indirect voting interest in TELPRI as non-WTO ownership for purposes of our foreign ownership analysis.

58. We are therefore unable to determine on the basis of the record that foreign equity and voting interests that will be held indirectly in TELPRI by non-WTO investors acquiring shares in América Movil on U.S. and foreign public markets will not exceed 25 percent. America Movil has not identified the citizenship or principal places of business of public investors that hold, in the aggregate, 57.54 percent of the capital stock and 4.65 percent of the full voting interest of America Móvil.<sup>176</sup> All of these unidentified foreign equity and voting interests flow through in their entirety to TELPRI. It is the Commission's policy to treat unidentified foreign ownership as non-WTO ownership." America Movil suggests that the degree of ownership identified in the record is quite large for a publicly traded company, particularly as compared to most of the Commission's large publicly traded U.S. licensees.<sup>178</sup> America Movil contends in its November 1, 2006 Letter that there is no need for it to inquire further into the nationality of the holders of its capital stock, such as a survey of its shareholders, because "the company is primarily owned and undoubtedly controlled by Mexican investors."<sup>179</sup> America Movil does not, however, go so far as to represent that its statement is so. The Commission has never held that a common carrier radio licensee or applicant (or its direct or indirect controlling U.S. parent company) is relieved of the obligation to ascertain and periodically survey the citizenship of its direct or indirect shareholders under section 310(b) of the Act simply because it has determined that it is primarily owned and controlled by U.S. citizens or citizens of another WTO Member country. The obligation to monitor its shareholdings applies regardless of whether the ultimate controlling parent of the licensee is organized in the United States or, in the case of a common carrier licensee, in another WTO Member country where the ultimate parent has its principal place of business and for which the licensee has received a foreign ownership ruling under section 310(b)(4).<sup>180</sup> In addition, the obligation applies to all stockholders not simply the controlling block.

59. Further, we have considered the information that America Movil has provided in its February 26 Letter." Relying on that information, however, would require the Commission to infer that

<sup>175</sup> See *infra* ¶ 60.

<sup>176</sup> Of the 51.54 percent unidentified total capital stock, 55.92 percent constitutes limited voting stock and 1.62 percent constitutes full voting stock. The 55.92 percent limited voting stock is held by Class L shareholders. See February 26 Letter at 4. The 1.62 percent full voting stock is held by Class A shareholders. See *id.* at 3-4.

<sup>177</sup> See Foreign Ownership *Guidelines*, 19 FCC Rcd at 22623

<sup>178</sup> See November 1 Letter at 3-4.

<sup>179</sup> *Id.* at 5. America Móvil finds that, "[e]ven under the best of circumstances, such surveys are very costly to the party undertaking the survey, and their results tend to be unreliable for a variety of reasons." *Id.*

<sup>180</sup> See, e.g., *Telenor Order*. 16 FCC Rcd at 22897, 22913, ¶ 36 (approving under section 310(b)(4) up to 100 percent indirect foreign ownership of Telenor Satellite by Telenor ASA and its Norwegian shareholders; and allowing an additional aggregate 25 percent indirect equity and/or voting interests from other unnamed non-U.S. investors, including non-Norwegians who may own Telenor ASA shares, subject to certain conditions).

<sup>181</sup> See February 26 Letter at 5. The letter informed the Commission about the merger of America Telecom into América Movil and provided the Commission with additional information about America Movil's post-merger ownership structure and shareholders. Venzon submitted similar information about America Movil in an *ex parte* (continued....)

the citizenship of the company's beneficial owners typically will correspond to: (1) the registered addresses of stockholders that have taken possession of their stock certificates; and (2) the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates. América Movil also states that, because the great majority of countries are WTO Members, it is highly reasonable to infer that companies with foreign shareholders qualify for the rebuttable presumption in favor of entry.<sup>182</sup> Although we recognize América Móvil's concerns as to the difficulties associated with being able to provide reliable identification of the beneficial owners where a company's equity is publicly traded and widely held, nevertheless, we decline, based on the record in this proceeding, to change the Commission's precedent by accepting street addresses of stockholders and banks as an indicator of citizenship of the beneficial owners. We find that, on balance and subject to the additional conditions set forth below, based on the particular facts of this transaction, the public interest does warrant grant of this transaction.

60. As discussed above, the Commission adopted a rebuttable presumption in the *Foreign Participation Order* that indirect foreign investment in common carrier radio licensees from WTO Member countries generally raises no competitive concerns.<sup>183</sup> At the same time, the Commission acknowledged that an applicant or licensee could have indirect foreign ownership from both WTO and non-WTO Member country investors.<sup>184</sup> The Commission stated that, in such circumstances, it would deny the application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.<sup>185</sup>

61. We are concerned that the Commission's policy goals in the *Foreign Participation Order* to increase competition and open foreign markets may be eroded by allowing entry by companies such as América Movil, which may have equity and voting interests attributable to investors from non-WTO Member countries and which appear to have no internal procedures in place to monitor the citizenship of investors acquiring shares in the public markets. On balance, however, we conclude that other public interest considerations weigh in favor of approving, with conditions, the Transfer of Control Application and the proposed foreign ownership of TELPRI and its subsidiary PRTC. The conditions specified in paragraph 65 below are designed to provide a higher level of confidence that America Movil will continue to have its principal place of business in Mexico or another WTO Member country and be managed by Mexican or other WTO Member citizens, and limit non-WTO investment to no more than 25 percent of its equity and voting interest.

62. A significant factor in our decision to approve with conditions, under section 310(b)(4), the proposed foreign ownership of TELPRI is our finding that America Móvil (through Sercotel) is the entity whose foreign entry we are asked to approve under the *Foreign Participation Order's* "open

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letter. See Letter from Nancy J. Victory, Wiley Rein, to Marlene Dortch, Secretary, Federal Communications Commission, dated February 26, 2007 (Verizon February 26 Letter).

<sup>182</sup> See February 26 Letter at 5 n.12.

<sup>183</sup> See *supra* ¶ 49.

<sup>184</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23940, ¶ 12 n.225.

<sup>185</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 13/ ("We conclude that our goals of increasing competition and opening foreign markets would continue to be served by opening the U.S. market to investors from non-WTO Member countries only to the extent that the investors' home markets are open to U.S. investors.")

entry” standard for applicants from WTO Member countries. The record demonstrates that America Movil (as well as Sercotel, Telcel and Tenedora) have their principal places of business in Mexico, a WTO Member country. We calculate that shares held in America Móvil by Mexican citizens (including SBCI shares held in trust) constitute 95.35 percent of America Movil’s full voting shares and that the majority interest in these shares is held by Mr. Carlos Slim Helú and certain members of his immediate family, all of whom are Mexican citizens. The controlling interest in these shares is held by the Slim family. We also find, based on the representations made by America Movil, that Mr. Slim exercises control of America Móvil.<sup>186</sup>

63. We are also persuaded to approve the proposed foreign ownership of TELPRI, conditioned as specified below, because the unidentified foreign equity and voting interests in TELPRI will consist largely of America Movil’s Class L shareholders. These shareholders have the right to elect only two members (representing a minority) of America Movil’s board of directors, and have the right as a group to block only certain significant corporate actions to protect their investments. We thus find that the corporate governance of America Movil is structured to prevent these shareholders from dominating the management of corporate affairs and to minimize their influence. While these shareholders as a group represent more than half the equity investment in America Móvil, the limits placed on their ability to influence management mitigates our concern in this case with the level of unidentified non-U.S., non-Mexican foreign ownership.

64. Also determinative to our decision to approve the proposed foreign ownership of TELPRI is our finding, in Section III.C. above, that the proposed transaction is unlikely to harm competition in U.S. markets.<sup>187</sup> We are classifying TELPRI’s long distance subsidiary PRT LD as a “dominant” international carrier, effective upon closing, on routes between the United States and foreign countries where PRT LD will become affiliated with foreign carriers that possess market power.<sup>188</sup> We also determine in Section III.H. below that the Executive Branch Agreement among DOJ, FBI and DHS and the Applicants and the Commitment Letter addresses any national security, law enforcement and public safety concerns.<sup>189</sup>

65. We impose several conditions that are intended to provide us a high level of confidence that America Movil will continue to have its principal place of business in Mexico or another WTO Member country and be managed by Mexican or other WTO Member citizens. Specifically, we impose the following conditions on our grant of the Transfer of Control Application and the request for approval of TELPRI’s post-transaction foreign ownership. We require that America Móvil obtain prior Commission approval, pursuant to section 310(b)(4), before the company goes private, or otherwise issues or causes to be issued, directly or indirectly, without limitation, as a result of any share repurchase, redemption or other recapitalization, securities that would represent more than 5 percent of its equity or voting interests (whether full or limited voting interests). We also require America Movil to notify the Commission within 10 days of notification to the company, pursuant to U.S. securities or similar foreign laws or regulations, or based on information otherwise received by the company, that a

<sup>186</sup> See November 1 Letter at 5 (“... Mr. Slim exerts significant influence over the election of America Movil’s Board of Directors, and the outcome of any actions requiring the vote of America Movil’s shareholders.”). See also February 26 Letter at 2 (the merger between America Movil and America Telecom has been completed and “does not involve a substantial change in control of America Movil, nor has the ownership structure changed in any significant way.”).

<sup>187</sup> See *supra* ¶¶ 22-33.

<sup>188</sup> See *supra* Section III.F.

<sup>189</sup> See *infra* ¶¶ 69-12.

person<sup>190</sup> has acquired through one transaction or a series of transactions over time, directly or indirectly, the beneficial ownership of securities that would represent more than 5 percent of any class of equity security of the company. America Movil shall include in such notifications, addressed to the Chief, International Bureau, the identity and citizenship of such person and shall specify the share class acquired and whether and, if so, how the voting rights of such class has changed since adoption of this order.

66. The purpose of requiring prior approval of the specified transactions under section 310(b)(4) is to allow the Commission to identify and disapprove potential conveyances of significant share ownership to individuals or entities from non-WTO Member countries. Notification of the acquisition of equity securities in the public markets in excess of 5 percent will not provide us with a ready means to require repurchase of interests already acquired by non-WTO Member country investors, but will provide information as to whether revocation or conditions on future common carrier radio licenses held by PRTC or another subsidiary of TELPRI may be required.

67. Finally, we deny, in part, America Movil's request that the ruling allow the individuals and entities that already exercise control of America Movil to engage in transactions without prior Commission approval that may increase their ownership interests in it above current levels. We will allow Mr. Carlos Slim Helú and members of his immediate family to increase their equity and/or voting interests held directly or indirectly in America Movil by an aggregate three percent above the levels they held upon closing of the merger between America Movil and América Telecom to account for fluctuations in publicly traded shares.

### 3. Declaratory Ruling

68. Accordingly, this declaratory ruling permits the indirect foreign ownership of PRTC by Sercotel (through Telcel and Tenedora, and the 0.01 percent qualifying shareholders of the three companies), and by America Móvil and its Mexican shareholders (up to and including 100 percent of the equity and voting interests), subject to the requirement that the equity and/or voting interests held directly or indirectly in America Movil by Mr. Carlos Slim Helú and members of his immediate family not exceed, without prior Commission approval, an aggregate three percent above the levels they held upon closing of the merger between América Movil and America Telecom. We also approve foreign ownership of PRTC by America Movil's non-U.S. and non-Mexican shareholders acquiring shares on U.S. and foreign public markets provided América Movil complies with the conditions specified in paragraphs 65-67, above; and provided PRTC obtains prior Commission approval before its direct or indirect equity and/or voting interests from non-WTO Member countries exceeds 25 percent. We emphasize that, as a Commission licensee, PRTC has an affirmative duty to continue to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.<sup>191</sup>

### H. National Security, Law Enforcement, Foreign Policy and Trade Concerns

69. When analyzing a transfer of control or assignment application in which foreign investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.<sup>192</sup> The Executive Branch Agreement between DOJ,

<sup>190</sup> The word "person" includes a corporation, limited liability company, general partnership, limited partnership, and unincorporated association.

<sup>191</sup> See *Foreign Ownership Guidelines*, 19 FCC Rcd at 22624-26.

<sup>192</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 59; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24170, ¶ 178 (1997).

FBI, DHS and the Applicants addresses Executive Branch national security, law enforcement, and public safety concerns about the transfer of control of TELPRI from Verizon to America Móvil.<sup>193</sup>

70. The DOJ Petition to Adopt Conditions to Authorizations and Licenses states that the DOJ, FBI and DHS have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers.<sup>194</sup> After discussions with the Applicants, DOJ, FBI and DHS have concluded that the commitments set forth in the Executive Branch Agreement address their concerns, and therefore asked the Commission to condition the grant on the Applicants' compliance with the commitments set forth in the Petition to Adopt Conditions to Authorizations and Licenses.<sup>195</sup>

71. The DOD Petition to Attach Conditions states that it has no objection to the Commission's granting the instant Transfer of Control Application, provided that the Commission condition such authorization on America Móvil's and TELPRI's abiding by commitments and undertakings set forth in their Commitment Letter.<sup>196</sup> After discussions with America Movil and TELPRI, DOD states that it has concluded that the commitments in the Commitment Letter will adequately safeguard DOD's ability to realign military installations, as mandated by the 2005 Defense Base Closure and Realignment Commission,<sup>197</sup> and will ensure that appropriate security controls remain in place to protect sensitive military communications. DOD further states that the conditions contained in the Commitment Letter demonstrate agreement by the grantees that they will undertake to meet existing TELPRI subsidiaries' contractual obligations, and to support appropriate contingency responses necessary to defend America.'''

72. In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.<sup>199</sup> As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.<sup>200</sup> In accordance with the request of DOD and DOJ, FBI and DHS, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Transfer of Control Application on Applicants' compliance with the commitments set forth in the

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<sup>193</sup> DOJ Petition to Adopt Conditions at 3.

<sup>194</sup> DOJ Petition to Adopt Conditions at 1-2

<sup>195</sup> *Id.*

<sup>196</sup> DOD Petition to Attach Conditions at 1. *See also* Letter from Alejandro Cantú Jimenez, America Movil, S.A. de C.V., to Hilary J. Morgan, Deputy General Counsel for Regulatory and International Law, Defense Information Systems Agency, Terence A. Spann, Deputy Chief, Regulatory Law and Intellectual Property Division, Stephen S. Melnikoff, Principal Telecommunications Trial Counsel, Regulatory Law Office, U.S. Army Litigation Center, Office of the Judge Advocate General, and Gregory A. Lund, Office of the Staff Judge Advocate, dated December 19, 2006 (Commitment Letter). The Commitment Letter is attached to the DOD Petition to Attach Conditions as Exhibit I.

<sup>197</sup> Consistent with the Defense Base Closure and Realignment Act of 1990, as amended, (Public Law 101-510) November 5, 1990.

<sup>198</sup> DOD Petition to Attach Conditions at 2.

<sup>199</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66

<sup>200</sup> *Id.* at 23919, ¶ 62

Executive Branch Agreement, including the proposed condition attached as Exhibit B to the Executive Branch Agreement. We include the Executive Branch Petition and the Executive Branch Agreement as Appendix B to this *Memorandum Opinion and Order and Declaratory Ruling*. We also include the DOD Petition to Attach Conditions and the Commitment Letter as Appendix C.

#### IV. CONCLUSION

73. Upon review of the Transfer of Control Application and the record in this proceeding, we conclude that approval of this transaction, subject to the conditions set forth herein, is in the public interest. We find that competitive harm is unlikely in markets for wireline and mobile telephony in Puerto Rico as a result of this transaction. Further, we find no record evidence to conclude that the foreign ownership of TELPRI, the parent of PRTC, would pose a **risk** to competition in Puerto Rico. We classify PRT LD as a dominant U.S.-international carrier in its provision of service on the U.S.-Mexico, U.S.-Brazil, U.S.-Guatemala, U.S.-Nicaragua and U.S.-El Salvador routes, and continue its classification as dominant on the U.S.-Dominican Republic route, effective upon consummation of the transfer of control of the relevant international section 214 authorizations. Further, based upon the foregoing findings and pursuant to section 310(b)(4) of the Act, we conclude that it would not serve the public interest to prohibit the indirect foreign ownership in PRTC, subject to the Applicants' compliance with their commitments to the DOJ, FBI, DHS and DOD as set forth in Appendices B and C.<sup>201</sup> This grant is also conditioned upon certain notification requirements, prior Commission approval under section 310(b)(4) of future specified transactions, and other limitations as set forth in this Memorandum Opinion and Order and Declaratory Ruling.<sup>202</sup>

#### V. ORDERING CLAUSES

74. Accordingly, having reviewed the Transfer of Control Application, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Transfer of Control Application for consent to transfer of control of the licenses and authorizations identified in Appendix A from Verizon Communications, Inc. and subsidiaries to America Móvil, S.A. de C.V., is GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order and Declaratory Ruling.

75. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b), that the Petition for Declaratory Ruling requested by America Movil, S.A. de C.V. is GRANTED to the extent set forth herein.

76. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, 310(b), 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Justice, including the Federal Bureau of Investigation, on behalf of itself and the U.S. Department of Homeland Security on December 15, 2006 IS GRANTED. Grant of the Transfer of Control Application and the declaratory ruling IS CONDITIONED UPON compliance with the commitments set forth in the Executive Branch Agreement, attached to this Memorandum Opinion and Order and Declaratory Ruling as an Appendix.

77. IT IS FURTHER ORDERED that this authorization and any licenses related thereto are subject to America Móvil's commitment in its March 23 *Ex Parte* Letter contained in Appendix D of this Memorandum Opinion and Order and Declaratory Ruling.

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<sup>201</sup> See *supra* ¶ 12.

<sup>202</sup> See *supra* ¶¶ 65-67.

78. IT IS FURTHER ORDERED that this authorization and any licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between América Móvil, on behalf of itself and its subsidiaries through which it will hold its interest in TELPRI, and TELPRI (collectively, "the Companies"), on the one hand, and the U.S. Department of Justice ("DOJ"), and the U.S. Department of Homeland Security ("DHS"), on the other (collectively, "The USG Parties"), dated December 15, 2006, which agreement is intended to enhance the protection of U.S. national security, law enforcement, and public safety. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation.

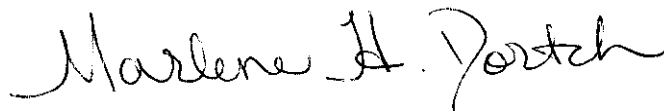
79. IT IS FURTHER ORDERED that this authorization and any licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between America Movil, S.A. de C.V., on behalf of itself and its subsidiaries through which it will hold its interest in TELPRI (collectively, the Companies), on the one hand, and the United States Department of Defense (DOD) on the other, dated December 19, 2006, which Agreement is intended to enhance the protection of U.S. national security and public safety. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation.

80. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, PRT LD SHALL BE CLASSIFIED as a dominant international carrier in its provision of service on the U.S.-Mexico, U.S.-Brazil, U.S.-Guatemala, U.S.-Nicaragua, U.S.-El Salvador, and U.S.-Dominican Republic routes, and as a non-dominant international carrier on all other U.S.-international routes, effective upon consummation of the transfer of control of the international section 214 authorizations specified in this Memorandum Opinion and Order and Declaratory Ruling.

81. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny filed by WorldNet Telecommunications, Inc., the Puerto Rico Telecommunications Regulatory Board, Centennial Communications Corp. and Telefónica Larga Distancia de Puerto Rico ARE DENIED for the reasons stated herein.

82. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary



## APPENDIX A

## SECTION 214 AUTHORIZATIONS

## A. International

	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-200605 10-00268	PRT Larga Distancia, Inc.	ITC-2 14-19960215-00072 ITC-214-20000714-00410 ITC-214-20051129-00480

## B. Domestic

<u>Docket No.</u>	<u>Authorization Holder</u>
See WT Docket No. 06-1 13	Puerto Rico Telephone Company, Inc PRT Larga Distancia, Inc.

## SECTION 310(D) AUTHORIZATIONS

## A. Part 22-Cellular Licenses

<u>File No.</u>	<u>Licensee</u>	<u>Call Sien</u>
0002597508	Puerto Rico Telephone Company, Inc.	KNKN 414, <i>et al.</i>

## B. Part 24-Personal Communications Services Broadband Licenses

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0002597508	Puerto Rico Telephone Company, Inc.	KNLG211, <i>et al.</i>

## C. Part 90-Private Land Mobile Radio Services

<u>File No.</u>	<u>Licensee</u>	<u>Call Sien</u>
0002597508	Puerto Rico Telephone Company, Inc.	WYW890, <i>et al.</i>

D. Part 101-Digital Electronic Service Message Licenses and  
Common Carrier Fixed Point-to-Point Microwave Licenses

<u>File No.</u>	<u>Licensee</u>	<u>Call Sien</u>
0002597508	Puerto Rico Telephone Company, Inc.	WHB418, <i>et al.</i> WBB286, <i>et al.</i>



APPENDIX B

[ EXECUTIVE BRANCH AGREEMENT ]



<i>In the Matter of</i>	)	
	)	
Verizon Communications, Inc., Transferor	)	
	)	
and	)	
	)	WT Docket No. 06-113
America Movil, S.A. de C.V.. Transferee	)	
	)	tile nos. 0002597508,
	)	ITC-TIC-200605 10-00269
	)	ISP-PDR-20060509-00006
Section 214 and 310(d) Applications and petition	)	
for declaratory ruling under Section 310(b)(4)	)	
related to transfer of control of subsidiaries of	)	
Telecomunicaciones de Puerto	)	
Rico, which is indirectly controlled by Verizon,	)	
to America Movil	)	

## PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES

1

Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”), abiding by the commitments and undertakings set forth in their Security Agreement (the “Agreement”), which is attached hereto as Exhibit 1. A proposed condition is also attached to the Agreement as Appendix B.

In the above-captioned proceeding, Verizon Communications, Inc., TELPRI, and America Movil, have submitted applications and petitions seeking the Commission’s consent to transfer to America Movil certain wireless licenses and domestic and international Section 214 authorizations, and other assets. Because America Movil is organized under the laws of Mexico, the companies also requested a declaratory ruling that the transaction is consistent with the public interest standard of Section 310(b)(4) of the Act.

As the Commission is aware, the Agencies have taken the position that the requirements of national security, law enforcement, and public safety could be affected by transactions such as the instant case, in which foreign entities will own or operate a part of the domestic telecommunications system in order to provide telecommunications services to U.S. customers. The Commission has, time and again, recognized the role that considerations of national security, law enforcement, and public safety play in the Commission’s public interest determinations, and the Commission has adopted the now long-standing policy of deference towards other federal agencies with expertise in these areas. *See In the matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 F.C.C.R. 23,891, ¶ 62 (November 26, 1997) (“We thus will continue to accord deference to the expertise of the Executive Branch agencies in identifying and interpreting issues of concern related to national security, law

enforcement, and foreign policy that are relevant to an application pending before us.”); *see also In the Matter of Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., etc.*, FCC 06-167, 2006 WL 3299682 (November 13, 2006) (according deference and adopting conditions). After discussions with representatives of the applicant companies, the aforementioned Agencies have concluded that the commitments set forth in the Agreement will help ensure these important requirements and will assist the Agencies in meeting their safeguarding responsibilities. Accordingly, the Agencies hereby advise the Commission that they have no objection to the Commission granting the above-referenced applications, provided that the Commission conditions its consent on compliance by the grantees with the commitments set forth in the attached Security Agreement.

The Agencies are further authorized to state that the Applicant does not object to the grant of this Petition.

For the Agencies,

/S/\_\_\_\_\_  
Christopher P. Simkins  
Senior Counsel, Office of the Assistant Attorney General  
National Security Division

/S/\_\_\_\_\_  
Stewart A. Baker  
Assistant Secretary for Policy  
U.S. Department of Homeland Security

/S/\_\_\_\_\_  
Elaine N. Lammert  
Deputy General Counsel  
Federal Bureau of Investigation





**Exhibit 1**



## **SECURITY AGREEMENT**

This SECURITY AGREEMENT ("Agreement") is made as of the Effective Date by and between America Movil, S.A. de C.V., on behalf of itself and the subsidiaries through which it will hold its interest in TELPRI ("America Movil"), and Telecomunicaciones de Puerto Rico, Inc. ("TELPRI"), (collectively, "the Companies"), on the one hand, and the U.S. Department of Justice ("DOJ"), and the U.S. Department of Homeland Security ("DHS"), on the other (collectively, "the USG Parties"), referred to individually by name or as "a Party" and collectively as "the Parties."

## **RECITALS**

WHEREAS, U.S. communication systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. Government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States;

WHEREAS, protection of Classified and Sensitive Information is critical to U.S. national security;

WHEREAS, TELPRI has an obligation to protect from unauthorized disclosure the contents of wire and electronic communications;

WHEREAS, TELPRI is the largest telecommunications service provider in Puerto Rico; through its wholly owned subsidiaries Puerto Rico Telephone Company, Inc. ("PRT") and PRT Larga Distancia, Inc. ("PRT LD"), TELPRI provides approximately 93% of wireline (domestic and long distance) and approximately 24% of the wireless telecommunications on the island; and additionally, TELPRI and its Puerto Rico-based companies provide on-island Internet access, private data services and virtual private network ("VPN");

WHEREAS, as disclosed to the Committee on Foreign Investment in the United States ("CFIUS"), TELPRI subsidiary PRT provides telecommunication services to federal government agencies and the Puerto Rico National Guard;

WHEREAS, according to a September 29, 2006 filing by the Companies and Verizon Communications Inc. ("Verizon") with CFIUS, Verizon and America Movil have entered into an agreement whereby Verizon and other stockholders in TELPRI will sell the issued and outstanding shares of common stock of TELPRI to certain America Movil subsidiaries, which will result in America Movil's ultimate ownership and control of TELPRI (the "Transaction");

WHEREAS, by Executive Order 12661, the President, pursuant to Section 721 of the Defense Production Act, as amended, authorized CFIUS to review, for national security purposes, foreign acquisitions of U.S. companies;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety issues.

## ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1. “Access” or “Accessible” means the ability to physically or logically undertake any of the following actions: (i) read, divert, or otherwise obtain non-public information or technology from or about software, hardware, a system or a network; (ii) add, edit or alter information or technology stored on or by software, hardware, a system or a network; and (iii) alter the physical or logical state of software, hardware, a system or a network (e.g., turning it on or off, changing configuration, removing or adding components or connections).

1.2. “America Móvil” has the meaning given to it in the Preamble to this Agreement.

1.3. “Call Associated Data” means any information related to a Domestic Communication or related to the sender or recipient of Domestic Communication, to the extent the Domestic Companies maintain such information in the normal course of business. Call Associated Data includes without limitation: subscriber identification; called party number; calling-party number; start time; end time; call duration; feature invocation and deactivation; feature interaction; registration information; user location; diverted-to number; conference-party numbers; post-cut-through dial-digit extraction; in-band and out-of-band signaling; and party add, drop and hold.

1.4. “Classified Information” means information or technology that is classified according to Executive Order 12958, as amended by Executive Order 13292 or any successor executive order, or the Atomic Energy Act of 1954 or any statute that succeeds or amends the Atomic Energy Act of 1954.

1.5. “Closing Date” means the date on which the Transaction is consummated

1.6. “Control” and “Controls” means the power, direct or indirect, whether exercised, exercisable or not exercised, through any means employable, to decide, direct or otherwise influence matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

- (i) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (ii) the dissolution of the entity;
- (iii) the closing and/or relocation of the production or research and development facilities of the entity;

- (iv) the termination or non-fulfillment of contracts of the entity;
- (v) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in subsections (i) through (iv) above; and
- (vi) the Domestic Companies' obligations under this Agreement.

1.7. "Customer Information" means Identifying Information for any customer of TELPRI or PRT.

1.8. "Data Centers" means (a) equipment (including firmware, software and upgrades), facilities, and premises used by (or on behalf of) one or more Domestic Companies in connection with Hosting Services (including data storage and provisioning, control, maintenance, management, security, selling, billing, or monitoring of Hosting Services), and (b) equipment hosted by the Domestic Companies that is leased or owned by a Hosting Services customer.

1.9. "De facto" and "de jure" control have the meanings provided in 47 C.F.R. § 1.2110

1.10. "Domestic Communications" means (i) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another **U.S.** location and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

1.11. "Domestic Communications Infrastructure" means (i) transmission, switching, bridging and routing equipment (including software and upgrades) in use to provide, process, direct, control, supervise or manage Domestic Communications; and (ii) facilities and equipment that are used to control the equipment described in (i). Domestic Communications Infrastructure does not include equipment dedicated to the termination of international undersea cables, provided that such equipment is utilized solely to effectuate the operation of undersea transport network(s) outside of the United States and in no manner controls land-based transport network(s) or their associated systems in the United States, nor does it include facilities and equipment intended and capable solely of performing billing, customer management, business management or marketing functions.

1.12. "Domestic Companies" means TELPRI and all existing and post-Agreement subsidiaries, divisions, departments, branches and other components of TELPRI, or any other entity over which TELPRI has *de facto* or *de jure* control, that (i) provide Domestic Communications, or (ii) engage in provisioning, control, maintenance, management, security, selling, billing, or monitoring of Hosting Services, or data.

1.13. "Effective Date" means the date of the last signature affixed to this Agreement by the Parties.

1.14. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).

1.15. "FBI" means the Federal Bureau of Investigation.

1.16. “Foreign Entity” means any Foreign Person; any entity established under the laws of a country other than the United States, or any government other than the U.S. Government or a U.S. state **or** local government.

1.17. “Foreign Person” means any Person who is not a U.S. Person as provided by 31 C.F.R. § 800.222.

1.18. “Hosting Services” means Web hosting (whether shared or dedicated, and including design, server management, maintenance and telecommunications services), Web site traffic management, electronic commerce, streamed media services, server collocation and management, application hosting, and all other similar services offered by the Domestic Companies.

1.19. “Identifying Information” means the name, address, telephone number, e-mail address, I.P. address, or any other information that is customarily used to identify a particular end user.

1.20. “Intercept” or “Intercepted” has the meaning defined in 18 U.S.C. § 2510(4).

1.21. “Lawful U.S. Process” means lawful U.S. federal, state, or local court orders, subpoenas, warrants, processes, or authorizations issued under U.S. federal, state, or local law for electronic surveillance, physical search or seizure, production of tangible things, or Access to or disclosure of Domestic Communications, Call Associated Data, or U.S. Hosting Data, including Transactional Data or Subscriber Information.

1.22. “Lawfully Authorized Electronic Surveillance” means:

- (i) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(4), (1), (2), and (12), and electronic surveillance as defined in 50 U.S.C. § 1801(f);
- (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 et seq.;
- (iii) acquisition of dialing, routing, addressing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 et seq. and 50 U.S.C. § 1841 et seq.;
- (iv) acquisition of location- related information concerning a service subscriber or facility;
- (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and
- (vi) access to, or acquisition or interception of, or preservation of communications or information as described in (i) through (ii) above and comparable State laws.

1.23. “Network Management Information” means: network plans, processes and procedures; placement of Network Operating Center(s) and linkages to other domestic and international

carriers, ISPs or other critical infrastructures; descriptions of any IP networks and operations processes and procedures related to backbone infrastructure(s); description of any proprietary control mechanisms and operating and administrative software; and all network performance information.

1.24. “Party” and “Parties” have the meanings given them in the Preamble

1.25. “Personnel” means an entity’s (i) employees, officers, directors, and agents, and (ii) contract or temporary employees (part-time or full-time) who are under the direction and control of the entity and have Access to its products or services.

1.26. “Routine Business Visits” has the meaning given it in Section 3.6 of this Agreement.

1.27. “Security Incident” means any of the following incidents with respect to the Domestic Companies’ products and services, when such incidents materially harm the national security interests of the United States: (i) the insertion of malicious code; insertion and/or transmittal of viruses or worms; denial of service attacks; use of botnets; phishing; identity theft; and unauthorized redirection or misdirection of Internet page requests (for purposes of the foregoing list an incident that is within the reporting guidelines of the United States Computer Emergency Readiness Team shall be considered a Security Incident); (ii) unauthorized addition, alteration, deletion, acquisition, theft, transfer, diversion of or Access to Classified Information, Sensitive Information, USG Customer Information and Customer Information; (iii) establishment of unauthorized communications channels to any foreign government or other unauthorized recipient; (iv) other unauthorized addition, alteration, deletion, acquisition, theft, transfer, diversion of or Access to information or technology as identified in collaboration with the USG Parties in the Security Policy required under Section 3.2 of this Agreement; or (v) any other similar use of the Domestic Companies’ Products or Services.

1.28. “Sensitive Information” means information that is not Classified Information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Lawfully Authorized Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Lawfully Authorized Electronic Surveillance pursuant to Lawful U.S. Process, (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and any other U.S. Government information that is designated in writing by an authorized official as “Sensitive Information,” “Official Use Only,” “Limited Official Use Only,” “Law Enforcement Sensitive,” “Sensitive Security Information,” “Not For Distribution to Foreigners,” “NOFORN,” or other similar categories.

1.29. “Subscriber Information” means information relating to subscribers or customers of Domestic Companies, including U.S. Hosting Services Customers (or the end-users of U.S. Hosting Services Customers), of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.30. “Stock Purchase Agreement” means the Stock Purchase Agreement, dated April 2, 2006, by and between GTE Holdings (Puerto Rico) LLC and Sercotel, S.A. de C.V., which is a subsidiary of America Móvil.

1.31. “TELPRI” has the meaning given to it in the Preamble.

1.32. “Transaction” means the purchase of TELPRI by America Movil pursuant to the terms of the Stock Purchase Agreement.

1.33. “Transactional Data” means:

- (i) “call identifying information,” as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
- (ii) any information possessed by the Domestic Companies relating to the identity or location of any customer, subscriber, account payer, or any end-user relating to all telephone numbers, domain names, IP addresses, Uniform Resource Locators (“URLs”);
- (iii) the time, date, size or volume of data transfers, duration, domain names, MAC or IP addresses (including source and destination), URLs, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics associated with any Domestic Communication, or other Wire or Electronic Communication within the definition of U.S. Hosting Data;
- (iv) any information related to any mode of transmission (including mobile transmissions); and
- (v) any information indicating the physical location to or from which a Domestic Communication, or other Wire or Electronic Communication within the definition of U.S. Hosting Data, is transmitted, which includes all records or other information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c)(1) and (d).

1.34. “United States” or “U.S.” means the United States of America including all of its states, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States, and specifically includes the Commonwealth of Puerto Rico.

1.35. “U.S. Hosting Data” means all data, records, documents, or information (including Domestic Communications, other Wire or Electronic Communications, Subscriber Information, and Transactional Data) in any form (including but not limited to paper, electronic, magnetic, mechanical, or photographic) transmitted, received, generated, maintained, processed, used by or stored in a Data Center for a U.S. Hosting Services Customer.



1.36. “U.S. Hosting Services Customer” means any customer or subscriber that receives Hosting Services from the Domestic Companies that are U.S.-domiciled or holds itself out as being U.S.-domiciled.

1.37. “USG Customer Information” means any Identifying Information for any customer of the Domestic Companies that qualifies as or constitutes the U.S. Government as well as any other records or information pertaining to telecommunications equipment needs and/or purchases by the U.S. Government.

1.38. “Wire Communication” has the meaning given it in 18U.S.C. § 2510(1).

1.39. Other Definitional Provisions. Other capitalized terms used in this Agreement, including in the Preamble, and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

## **ARTICLE 2: FACILITIES, INFORMATION STORAGE AND ACCESS**

2.1. Domestic Communications Infrastructure. Except to the extent and under conditions concurred in by the USG Parties in writing:

- (i) all Domestic Communications Infrastructure owned, operated or controlled by the Domestic Companies shall at all times be located in the United States and directed, controlled, supervised and managed by the Domestic Companies;
- (ii) all Domestic Communications that are carried by or through the Domestic Communications Infrastructure shall pass through facilities under the control of the Domestic Companies that are physically located in the United States, and from which Lawfully Authorized Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. Domestic Companies will provide technical or other assistance to facilitate such Lawfully Authorized Electronic Surveillance; and
- (iii) all foreign connections traffic for circuit-switched communications and, to the extent technically feasible, Internet communications shall be monitored using industry best-practices, by the Domestic Companies for unauthorized access, unauthorized network intrusions and any other malicious activity.

2.2. Data Centers and Access to Communications. Except to the extent and under conditions concurred in by the USG Parties in writing:

- (i) all Data Centers used to provide Hosting Services to U.S. Hosting Services Customers shall at all times be located in the United States; and
- (ii) the Domestic Companies shall ensure that Wire or Electronic Communications of any specified U.S. Hosting Services Customer that are transmitted to, from or

through a Data Center shall be accessible from, or pass through a US.-based facility that is under the control of the Domestic Companies, and from which Lawfully Authorized Electronic Surveillance can be conducted.

2.3. Domestic Infrastructure and Data Center Compliance with Lawful U.S. Process. The Domestic Companies shall take all steps necessary to configure Domestic Communications Infrastructure and Data Centers to comply with:

- (i) Lawful U.S. Process;
- (ii) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, 47 U.S.C. § 606, and under § 302(e) of the Aviation Act of 1958, 49 U.S.C. § 40107(b) and Executive Order 11161 (as amended by Executive Order 11382); and
- (iii) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq.

2.4. Domestic Employee Compliance with Lawful U.S. Process. The Domestic Companies shall take all steps necessary to ensure that its employees in the United States have unconstrained authority to comply with:

- (i) Lawful U.S. Process;
- (ii) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, 47 U.S.C. § 606, and under § 302(e) of the Aviation Act of 1958, 49 U.S.C. § 40107(b) and Executive Order 11161 (as amended by Executive Order 11382); and
- (iii) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq.

2.5. Information Storage. The Domestic Companies shall store exclusively in the United States the following:

- (i) stored Domestic Communications;
- (ii) Wire Communications or Electronic Communications received by, intended to be received by, or stored in the account of a customer or subscriber of **the** Domestic Companies.
- (iii) Transactional Data and Call Associated Data relating to Domestic Communications;

- (iv) Subscriber Information concerning customers who are U.S.-domiciled, customers who hold themselves out as being U.S.-domiciled, and customers who make any Domestic Communication;
- (v) billing records of customers who are U.S.-domiciled, customers who hold themselves out as being U.S.-domiciled, and customers who make any Domestic Communication; and
- (vi) Network Management Information, provided, however, that duplicate copies of such Network Management Information may be maintained at America Movil's headquarters in Mexico City, Mexico.

**2.6. U.S. Hosting Data Storage and Access.** The Domestic Companies shall be able to provide to the USG Parties any stored U.S. Hosting Data. The Domestic Companies shall not store U.S. Hosting Data outside of the United States without written authorization from the USG Parties. Additionally, the Domestic Companies shall take all steps necessary to ensure that U.S. Hosting Data is stored in a manner not subject to mandatory destruction under any foreign laws.

**2.7. Billing Records.** The Domestic Companies shall store for at least five years all billing records described in Section 2.5(v) above.

**2.8. Routing of Domestic Communications and U.S. Hosting Data.** To the extent that routing of Domestic Communications and U.S. Hosting Data is controlled by the Companies or their affiliates, and except for routing of traffic (i) from or to U.S. states, territories and possessions outside the Continental United States, (ii) to avoid network disruptions, (iii) consistent with least-cost routing practices implemented pursuant to agreement between the Domestic Companies and the USG Parties, and (iv) only as agreed to in writing by the USG Parties, the Domestic Companies shall not route Domestic Communications or U.S. Hosting Data outside the United States. To the extent that routing of Domestic Communications and U.S. Hosting Data is controlled by the Companies or their affiliates, notwithstanding the foregoing and except for traffic bound to or from Mexico, Domestic Companies shall not route Domestic Communications or U.S. Hosting Data through Mexico. USG Parties recognize that the Domestic Companies' subscribers may choose alternative providers for their long distance service and that the Domestic Companies do not control interstate or international routing of calls for such subscribers.

**2.9. Storage of Protected Information.** The storage of Classified and Sensitive Information by the Domestic Companies or its contractors at any location outside of the United States is prohibited. Classified and Sensitive Information stored or maintained by the Domestic Companies in electronic form shall be encrypted.

**2.10. Network Topology.** Before the Closing Date, the Domestic Companies will provide to the USG Parties a comprehensive description of their domestic telecommunications network topology, including the location of servers, routers, switches, operational systems software, and network security appliances and software, and shall provide updates to such description upon request of any of the USG Parties.

2.11. Interconnection arrangements with América Móvil. Interconnection arrangements between Domestic Companies, on the one hand, and América Móvil, on the other hand, shall be made only through arms-length agreements based on commercial terms

2.12. CPNI. Domestic Companies shall comply, with respect to Domestic Communications, with all applicable Federal Communications Commission (“FCC”) rules and regulations governing access to and storage of Customer Proprietary Network Information (“CPNI”), as defined in 47 U.S.C. § 222(h)(1).

2.13. Compliance with U.S. Law. Nothing in this Agreement shall excuse the Domestic Companies from any obligation they may have to comply with any U.S. legal requirements, including but not limited to requirements for the retention, preservation, or production of such information or data. Similarly, in any action to enforce Lawful U.S. Process, the Domestic Companies have not waived any legal right that they might have to resist such process.

### **ARTICLE 3: SECURITY**

3.1. Security Policies and Procedures. The Domestic Companies shall take reasonable steps and adopt an internal compliance process designed to prevent Security Incidents by the Companies, their Personnel, and any third party person or entity, including any foreign government, with respect to any of the Domestic Companies’ products or services; such process shall include training and annual certification procedures. In the absence of prior approval by the USG Parties, the Companies shall not authorize any person or entity to take any action that, in the absence of such authorization, would constitute a Security Incident unless such authorization is consistent with this Agreement and with the normal course of the Companies’ business. The Domestic Companies also will maintain or exceed security standards and best practices utilized within the U.S. telecommunications industry and will consult with the USG Parties and other appropriate U.S. Government agencies on steps to maintain or exceed such standards and practices. The Domestic Companies shall take measures consistent with such practices to prevent the use of or access to the Domestic Communications Infrastructure or to Data Centers to conduct Lawfully Authorized Electronic Surveillance, or to obtain or disclose Domestic Communications, U.S. Hosting Data, Classified Information, or Sensitive Information, in violation of any U.S. federal, state, or local laws, or the terms of this Agreement. These measures shall include maintenance of all existing Domestic Companies’ security policies and procedures, and shall include provisions consistent with industry best practices for: maintenance of password systems, non-destructive access logs, including in particular, logs regarding any access to a capability to conduct electronic surveillance, and non-destructive audit logs; periodic internal network security audits; periodic switch audits to discover unauthorized “Free Line Service” accounts; physical security for access to Domestic Communications Infrastructure; and ensuring the placement of firewalls and associated security levels.

3.2. Maintenance of Existing Security Policies and Procedures. Consistent with Section 3.1 above, the Domestic Companies will maintain all existing security policies and procedures (attached hereto as Appendix A). The Domestic Companies will make all relevant information concerning these policies and procedures available to the USG Parties before the Closing Date of this Agreement and within thirty days of receipt of a written request made by the USG Parties during the life of this Agreement. Upon receipt of a written notice at least forty-eight hours in

advance from the USG Parties, the Companies will meet and confer with the USG Parties or their designees to address any concern. The Companies will provide at least thirty days advance written notice to the USG Parties of any proposed change to existing security policies. The Companies agree that if a Senate-confirmed official of any USG Party determines in writing that the proposed change would result in undue national security risk, the Companies will forgo the proposed change.

3.3. Security of Pre-Existing Lawfully Authorized Electronic Surveillance, Lawful U.S. Process and Protected Information. Prior to the Closing Date, the Domestic Companies' Security Officer(s) will secure all existing electronic surveillance equipment or processes, pursuant to procedures negotiated with the USG Parties, and will certify compliance with the requirements of Sections 2.9 and 3.1 of this Agreement with regard to any pre-existing Lawful U.S. Process, Classified, and Sensitive Information, including but not limited to: any order to intercept communications, order for a pen register or a trap and trace device, subpoena, or other lawful demand by a U.S. Government agency for U.S. records, including all Title III and FISA related intercepts and related orders data. America Móvil will not interfere with that securing of preexisting electronic surveillance activities, Lawful U.S. Process or other information pursuant to this Section. Additionally, America Movil and the Domestic Companies will not allow any person other than the Domestic Companies' Security Officer(s) to access any such information without first obtaining written authorization for such access from the USG Parties or from the agent of the USG who originally supplied the information to the Domestic Companies.

3.4. Security Officer Appointment, Responsibilities and Duties. The Head of Security of the Domestic Companies, or a designee in a direct reporting relationship with the Head of Security, shall serve as the Security Officer with the primary responsibility for ensuring compliance with the Domestic Companies' obligations under this Agreement, and shall be a resident citizen of the United States with an active security clearance or eligibility to apply for a security clearance as outlined in Executive Order 12968. The Domestic Companies will ensure that the Security Officer cooperates with any request by a USG Party for clearance or further background checks. Within thirty days after the Closing Date, the Domestic Companies shall notify the USG Parties of the identity of the Security Officer.

3.5. Visitation Policy. No later than ninety days after the Closing Date, the Domestic Companies shall adopt and implement a visitation policy for all visits by Foreign Persons to Domestic Communications Infrastructure. The visitation policy shall differentiate between categories of visits based on the sensitivity of the information, equipment and personnel to which the visitors will have access, and shall include a Routine Business Visit exception, as defined below. Under the policy, a written request for approval of a visit must be submitted to the Security Officer no less than seven days prior to the date of the proposed visit. For all visits to Domestic Communications Infrastructure covered by the policy, the Security Officer shall review and approve or disapprove the requests. A record of all such visit requests, including the decision to approve or disapprove, and information regarding consummated visits, such as date and place, as well as the names, business affiliation and dates of birth of the visitors, and the Domestic Companies' personnel involved, shall be maintained by the Security Officer for 2 years. During all such visits, visitors will be escorted at all times by an employee, and within conditions set forth by the Security Officer.

3.6 Routine Business Visits. Notwithstanding Section 3.5, Routine Business Visits may occur without prior approval by the Security Officer. A record of Routine Business Visits, including a log that contains the names of the visitors, their business affiliations, and the purpose of their visits, shall be maintained by the Security Officer for a period of at least two (2) years from the date of the visit itself. "Routine Business Visits" are those that: (a) are made in connection with the regular day-to-day business operations of the Domestic Companies; (b) do not involve Access to Call Associated Data, Classified Information, Customer Information, Domestic Communications, Domestic Communications Infrastructure, Sensitive Information, Subscriber Information, Transactional Data, U.S. Hosting Data, or USG Customer Information; and (c) pertain only to the commercial aspects of the Domestic Companies' business. These may include, but not limited to:

- (i) visits for the purpose of discussing or reviewing such commercial subjects as company performance versus plans or budgets; inventory, accounts receivable, accounting and financial controls; and business plans and implementation of business plans;
- (ii) visits of the kind made by customers or commercial suppliers in general regarding the solicitation of orders, the quotation of prices, or the provision of products and services on a commercial basis; and
- (iii) visits concerning fiscal, financial, or legal matters involving a Domestic Company.

3.7. Restrictions on Access to Lawfully Authorized Electronic Surveillance Information and Equipment. Lawful U.S. Process. The Security Officer will limit access to any information related to Lawfully Authorized Electronic Surveillance activities or equipment or to Lawful U.S. Process, including but not limited to all Title III and FISA related intercepts, orders data and equipment. Specifically, unless otherwise agreed by the USG Parties or the agent of the USG who supplied the information to the Domestic Companies, the Security Officer will ensure that only U.S. citizens with a need to know have access to such information and will control access to documents and systems in order to ensure the requisite limitations. The Security Officer will promptly report to the USG Parties any attempt to access the information above or interfere with any Lawfully Authorized Electronic Surveillance activities, in a manner that is inconsistent with the requirements of this Agreement. The Security Officer will maintain a list of the identities of individuals to whom he has provided access to any Lawfully Authorized Electronic Surveillance activities or equipment or to Lawful U.S. Process, and will produce such list upon request by a USG Party or its designee.

3.8. Access by Foreign Government Authority.. The Domestic Companies shall not, directly or indirectly, disclose or permit disclosure of, or provide access to Domestic Communications, U.S. Hosting Data, Call Associated Data, Transactional Data, or Subscriber Information stored by Domestic Companies to any person if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, component or subdivision thereof without the express written consent of the USG Parties or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process described in this Agreement shall be reported to the USG Parties as